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**5. Wills (§ 540\*)—Construction—Words of Survivorship.**—Under a will providing that at the death of the testator's wife his estate should be equally divided between the surviving children, the children surviving at the testator's, and not at the wife's death, take the property.

[Ed. Note.—For other cases, see Wills, Cent. Dig. §§ 1164, 1302-1309.\* 11 Va.-W. Va. Enc. Dig. 825, 826.]

**6. Wills (§ 629\*)—Construction—Remainders.**—A will should be construed to favor vested, rather than contingent, remainders.

[Ed. Note.—For other cases, see Wills, Cent. Dig. §§ 1461, 1462.\* 11 Va.-W. Va. Enc. Dig. 822; 13 Va.-W. Va. Enc. Dig. 818.]

**7. Wills (§ 540\*)—Construction—Words of Survivorship.**—Words of survivorship in a will should be construed to relate to the testator's, rather than a life tenant's death, unless a contrary intent clearly appears.

[Ed. Note.—For other cases, see Wills, Cent. Dig. §§ 1164, 1302-1309.\* 11 Va.-W. Va. Enc. Dig. 824.]

Appeal from Circuit Court, Henrico County.

Partition suit by William H. Mathews and others against Charles Cottrell and others. Decree for complainants, and the named defendant appeals. Affirmed.

*Marshall M. Gilliam*, of Richmond, for appellant.

*A. W. Patterson* and *E. L. Ryan*, both of Richmond, for appellees.

#### WASHINGTON-VIRGINIA RY. CO. v. FISHER.

June 14, 1917.

[92 S. E. 809.]

**1. Railroads (§ 299\*)—Private Crossings.**—Under Code 1904, § 1294b, as to private crossings, etc., a railroad, putting in for a landowner a private crossing which is smooth and level and satisfactory to the landowner is not liable to a member of the general public who, using the crossing for her own convenience, falls over its edge and is injured; the duty of the railroad being owed exclusively to the landowner.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. §§ 954, 958.\* 4 Va.-W. Va. Enc. Dig. 126; 11 Va.-W. Va. Enc. Dig. 570.]

**2. Railroads (§ 299\*)—Public Crossings—"County Roads or Highways."**—Although upon the acknowledgment and recordation of a plat the "Map Act" (Code 1904, § 2510a) creates a public easement or right of passage over such portions of the premises as are set

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

apart for streets, yet such streets do not become "county roads or highways" under Code, § 1294d, cls. 38, 39, regarding duties of railroads as to public crossings, unless and until they are accepted or established as such by the county authorities; the word "county," in section 1294d, modifying both the words "roads" and "highways."

[Ed. Note.—For other cases, see Railroads, Cent. Dig. §§ 954, 958.\* 44 Va.-W. Va. Enc. Dig. 125, 354.]

For other definitions, see Words and Phrases, First and Second Series, County Road.]

Error to Circuit Court, Alexandria County.

Action by Clara G. Fisher against the Washington-Virginia Railway Company. Judgment for plaintiff, and defendant brings error. Reversed.

*John S. Barbour and Moore, Keith, McCandlish & Hall*, all of Fairfax, for plaintiff in error.

*Crandal Mackey and F. S. Key-Smith*, both of Washington, D. C., for defendant in error.

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#### WHITE v. WHITE.

June 14, 1917.

[92 S. E. 811.]

**1. Divorce (§ 93 (2)\*)—Pleading—Certainty.**—In a husband's suit for divorce, complaint charging adultery held to sufficiently aver the place and circumstances with reasonable certainty.

[Ed. Note.—For other cases, see Divorce, Cent. Dig. §§ 299, 304-307.\* 4 Va.-W. Va. Enc. Dig. 746.]

**2. Divorce (§ 99\*)—Condonation—Pleading.**—In divorce, condonation is a matter of specific affirmative defense which must be specifically pleaded, and the burden of proof is upon the defendant.

[Ed. Note.—For other cases, see Divorce, Cent. Dig. §§ 316-318.\* 4 Va.-W. Va. Enc. Dig. 745, 746.]

**3. Divorce (§ 108\*)—Condonation—Decree.**—While the court may deny a divorce in the absence of pleading setting up condonation, it cannot do so where such defense is neither pleaded nor proved.

[Ed. Note.—For other cases, see Divorce, Cent. Dig. §§ 349-352.\* 4 Va.-W. Va. Enc. Dig. 747.]

**4. Divorce (§ 135\*)—Condonation—Evidence.**—In a husband's suit for divorce on the ground of adultery, evidence held not to show condonation.

[Ed. Note.—For other cases, see Divorce, Cent. Dig. § 451.\* 4 Va.-W. Va. Enc. Dig. 745.]

**5. Appeal and Error (§ 204 (1)\*)—Reservation of Grounds—Ad-**

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.